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TEE WEE KOK

v.

TEH LIANG TEIK & ORS

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HIGH COURT MALAYA, KUALA LUMPUR
PRASAD SANDOSHAM ABRAHAM JC
[SUIT NO: S-24-1124-2009]
9 FEBRUARY 2010

C ***MENTAL DISORDERS AND TREATMENT:*** *Inquiry - Application under ss. 3, 5 Mental Disorders Ordinance 1952 - Whether application made in the 1st defendant's best interest - Whether application made to protect plaintiff's commercial interest*

D The plaintiff applied for various orders to be made against the 1st defendant under ss. 3 and 5 of the Mental Disorders Ordinance 1952 ('MDO'). The 1st defendant was the father of the plaintiff and the 2nd, 3rd, 4th and 5th defendants. The 1st defendant was originally the only defendant in the matter but subsequently the others successfully applied to intervene in the application. The E application stemmed from a bitter family feud that hit the roof when in April 2002, the 2nd defendant was appointed the Managing Director of Malayan Flour Mills Berhad ('MFMB') to succeed the 1st defendant who controlled MFMB. The plaintiff was the Deputy Managing Director at the material time. The 1st defendant had F suffered a stroke in early 2001 and was hospitalised. The plaintiff claimed he was prevented from visiting the 1st defendant or informed of his actual medical condition. It was submitted that the 1st defendant was in a vegetative state and that the plaintiff was denied access to him. The plaintiff relied on photographs he had G taken of the 1st defendant at the hospital to establish the 1st defendant's weak condition. Apart from the instant application, the plaintiff had initiated various related court actions.

Held (dismissing the application with costs):

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(1) An inquiry under MDO would not be ordered as a matter of course and where no *prima facie* case is established after such a preliminary inquiry, the application may be rejected *in limine*. (para 6)

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(2) It was clear that the plaintiff's predominant purpose for visiting the 1st defendant in the hospital was to take photographs of the 1st defendant to support the instant application. By taking such photographs of the 1st defendant in his weakest state and to use the same to establish his vegetative state clearly showed the lengths the plaintiff would go to obtain the order the plaintiff sought. Conversely, the photographs showed that the 1st defendant was well-treated and that the plaintiff had access to him. (para 8)

(3) The sole aim of the instant application was related to the court actions that were afoot. The application was not made in the best interest of the 1st defendant but merely to protect and preserve the plaintiff's position in respect of the pending actions. The court would not allow an application under the MDO which did not take the 1st defendant's interest into account but made purely to protect the plaintiff's commercial interest. Nowhere in the plaintiff's affidavits was there mention of the treatment planned for the 1st defendant – the reason being – the 1st defendant was already getting the required treatment. The plaintiff also had an unfettered access to the 1st defendant at the hospital wherein the plaintiff seized that opportunity to take photographs of the 1st defendant so as to lay the basis of the instant application. No evidence too was led to any unexplained dissipation that the 1st defendant was being used by the 2nd defendant or others. (para 8)

(4) The instant application was an attempt by the plaintiff to use the 1st defendant as a pawn in the fight against his siblings. The 1st defendant had been residing in the family home since 1966 and to uproot him in his present state would only deteriorate his condition further. There was no evidence of physical abuse or ill-treatment of the 1st defendant. (para 10)

(5) The 1st defendant was in his late eighties. Having built his company, he became incapacitated due to his medical condition. The plaintiff sought orders against him due to the bitter feud with his siblings. The instant application would not solve the problems that were afoot but it would be instrumental in removing whatever dignity the 1st defendant might have had despite his helpless condition. He should be allowed to live his remaining years in peace and if when he should depart, he

should leave his family in peace and dignity. For that reason, it was not necessary or in his best interest to subject him to an interview or a preliminary medical examination. (para 11)

Case(s) referred to:
Prem Singh & Ors v. Kirpal Singh [1989] 1 LNS 100 HC ***(refd)***

Legislation referred to:
Mental Disorders Ordinance 1952, ss. 3, 5, 6

For the plaintiff - Lavinia Kumaraendran; M/s Thomas Philip
For the 2nd defendant - Teh Boon Eng; M/s Teh & Assoc
For the 3rd, 4th & 5th defendants - Dato' Anad Krishnan; M/s Anad & Noraini

Reported by Usha Thiagarajah

JUDGMENT

Prasad Sandosham Abraham JC:

[1] This rather unfortunate matter stems from encl. 1, (now encl. 19) as amended ie, the application of the plaintiff to seek various orders pursuant to the Mental Disorders Ordinance 1952 (MDO) as a consequence of a bitter family feud between siblings and I set out below the prayers sought:

a) that pursuant to s. 3 of the Mental Disorders Ordinance 1952:

(i) an inquiry be made into the state of mind of the respondent/defendant to determine whether respondent/defendant is mentally disordered and/or incapable of managing himself and his own affairs;

(ii) Such other directions as may be necessary for the purposes of and consequent to the inquiry on the respondent/defendant including but not limited to the following:

(a) The time during which the respondent/defendant was of unsound mind;

(b) Determine the extent and nature of the property of the respondent/defendant;

b) that pursuant to s. 5 of the Mental Disorders Ordinance 1952: A

(i) directions to be given by this Honourable Court as to the manner in which the notice of inquiry is to be served on the respondent/defendant;

(ii) directions be given by this Honourable court for service of the notice of the time and place for inquiry. B

[2] The 1st defendant Teh Liang Teik (TLT) is the father of the plaintiff and the 2nd, 3rd, 4th & 5th defendants. Originally the only defendant/respondent in the matter was TLT but later the 2nd, 3rd, 4th & 5th defendants applied to successfully intervene in the matter. TLT's wife & mother of TLT children passed away on 5 April 2003. C

[3] The spark that lit the fuse of this bitter family feud was when on 18 April 2002, the 2nd defendant was appointed the Managing Director of Malayan Flour Mills Berhad (MFMB). The plaintiff was at that time a member of the board of M.F.M.B and was holding the post as Deputy Managing Director. In April 2002, the 2nd defendant was appointed to succeed TLT at the helm of MFMB which at that material time was controlled through TLT's direct shareholding and *via* TLT's in direct shareholding in MFMB *via* several companies controlled by TLT (the Teh Companies) which held substantial shares in MFMB. The stage was set for a classicus bitter family dispute. TLT lived in the family home at 8 Jalan U-Thant (the family home) since 1966 together with the plaintiff and his family and the 2nd defendant and his family. D E F

[4] In early 2001, TLT had a stroke after returning from a business trip to Vietnam accompanied by the 2nd defendant faced "multiple strokes" in July 2003 after returning from Hong Kong and was hospitalized for a month. The plaintiff claims he was prevented from visiting TLT or was informed of his actual medical condition and whilst TLT was coping with his medical predicament, the feud between siblings had entered the arena of the courts. Very briefly the various court actions initiated in the main by the plaintiff were as follows: G H

(1) Litigation involving a deed of gift and a declaration as to its validity (the D6 suit) which is still pending. The plaintiff is one of the claimants in the D6 suit and the suit is still pending. I

(2) The plaintiff is one of the petitioners in originating Petition D2-26-44-2003 which is also still pending.

(3) There was also a *habeas corpus* application in the Kuala Lumpur criminal court, criminal Application No 44-79-2003 for a writ of *habeas corpus* for TLT to be brought to court and to be released. The hearing proceeded for 21/2 years and on 29 June 2006 the said proceedings were withdrawn.

(4) There was a suit filed in the High Court S2-22-362-2005 seeking various orders amongst others:

a) that the 2nd Defendant (as 1st Defendant in the S2 suit) be restrained from having contact with TLT;

b) that the 2nd Defendant be restrained from dealing with or disposing of any of the assets of TLT;

c) for the care and supervision of TLT;

d) for the 2nd Defendant to deliver an account of assets of TLT;

e) for the appointment of a Receiver and Manager of the assets of TLT.

[5] The said suit was struck out on the application of the 2nd defendant. Subsequent to the filing of this application, the plaintiff filed an application pursuant to s. 6 of the MDO for a preliminary examination of TLT by the court and the appointment of a professional medical examiner to examine the physical and mental capacity of D1. That application was dismissed as the court was of the view it ought to have been heard after this application.

[6] I am minded of the dictum of his Lordship Abdul Hamid Embong J (as he then was) in dealing with an application under the MDO 1952, "In short an inquiry under MDO would not be ordered as a matter of course and where no *prima facie* case is established after such a preliminary inquiry, the application may be rejected *in limine*".

[7] The plaintiff in their written submissions submit TLT is in a "vegetative state" and access to him is being blocked to the plaintiff and the plaintiff relies on the photographs TWK9 encl. 2 and the affidavits of non service at encls. 4, 5, &10. The plaintiff also

submits that TLT has not affirmed any affidavits apart from one affirmed in July 2003 despite numerous allegations made against TLT.

[8] The defendant deny these contentions. A careful scrutiny of the plaintiff's affidavit in support encl. 2 will give an inkling of the plaintiff's motivation in moving this application against TLT his father. Reference is made to para 16 of encl. 2 and in particular para 16.3. It is clear that the predominant purpose for visiting TLT was not just the emotional one but the need to take photographs to support this application. To take photographs of TLT at his weakest state in hospital and then use the same to establish TLT is in a vegetative state clearly shows the length the Plaintiff will go to obtain an order the plaintiff seeks. These paragraphs also show TLT was being well treated and the plaintiff had access to TLT despite being insensitive about the "taking of photographs". Going through para. 18 of encl. 2, it is abundantly clear that the sole aim of this application is related to the suits that are afoot. In encl. 11, para 7 to 12 again the averments of the plaintiff relate to the pending suit. The position is the same with regards to para 14 to 19 of encl. 22. The court is of the view that the plaintiff's application is not made in the best interest of TLT but merely to protect and preserve the position of the plaintiff in respect of the suits pending. The court cannot & will not allow an application under the MDO which does not take interest of TLT into account but made purely to protect the plaintiff's commercial interest. Nowhere in the affidavits of the plaintiff is mention made of TLT and the required treatment being planned for him. This is because TLT is already getting, the required treatment and the plaintiff has had unfettered access to TLT at Gleneagles, where the plaintiff chose to use that opportunity to take photographs to lay the basis of this application. Further there has been no evidence led of unexplained dissipation where TLT has been used by 2nd defendant or anybody else.

[9] I make reference to the case of *Prem Singh & Ors v. Kirpal Singh* [1989] 1 LNS 100; [1989] 2 MLJ p. 89 where it was held:

> (1) Section 3(1) of the Act clearly gives a discretion to the court to determine whether in a particular case where a person is alleged to be mentally disordered, an inquiry should be ordered. *It does not follow that an inquiry must be ordered in every case where it is shown that the person is of unsound mind and incapable of managing herself and her affairs.*

(2) In the present case, there is no allegation that there has been any physical assaults committed by the respondent on the patient since the mid-seventies. The patient is now being cared for and seems reasonable well settled with the respondent and her other children and there is no useful purpose in having an inquiry. In so far as her property is concerned, there is no evidence that she has anything more than the two POSB accounts and nothing has been shown that these two accounts require any special attention. Bearing in mind the object of such an inquiry and particularly the comments of Dr. N, a psychiatrist, in his report that 'it is neither necessary nor desirable to put her through an inquiry, *as this may subject her to unwanted stress which may cause a flare-up in her symptoms', the court is of the view that the holding of an inquiry at this time would not advance the interest of the patient nor would it be to her benefit.*

(3) *The court's jurisdiction under the Mental Disorders and Treatment Act should only be exercised for the benefit of a mentally disordered* person. It ought not to sanction a course of procedure which is likely to lead to further distress to the patient on account of the bitter dispute between the respondent and some of his children.

Chao Hick Tin JC (as he then was) said:

As I have stated in the beginning, it seems to me the conflict in the family is somewhat deep-rooted. What was the cause of the early turmoil is not known but I have the distinct feeling that the mother, Kishen Kaur, is slowly becoming a pawn in the conflict. She appears reasonably settled in her home and I do not see any useful purpose in having an inquiry. She has a house help to assist her in her domestic duties. In so far as her property is concerned, there is no evidence that she has anything more than the two POSB accounts. Nothing has been shown that these two accounts require any special attention. Bearing in mind the object of such an inquiry and particularly the comments of Dr. Nagulendran that 'it is neither necessary nor desirable to put her through an inquiry, at this may subject her to unwanted stress which may cause a flare-up in her symptoms' I am of the view that the holding of an inquiry at this time would not advance the interest of the patient nor would it be to her benefit.

The court's jurisdiction under the Mental Disorders and Treatment Act should only be exercised for the benefit of a mentally disordered person. I do not think this court ought to sanction a course of procedure which is likely to lead to further distress to the patient on account of the bitter dispute between the respondent and some of his children.

[10] Like in the above case, this application is an attempt by the plaintiff to use TLT as a pawn in the fight against his other siblings including the 2nd defendant. TLT has been residing in the family home since 1966 and to uproot him in his present state would only deteriorate his condition further and there has been no evidence of physical abuse or ill treatment. I am of the view that the above authority on the facts and the law is very relevant to the matter at hand.

[11] TLT is in his late eighties. Having built up MFMB, illness in the form of several strokes have incapacitated him. Now because of the bitter feud between the siblings including the plaintiff and the 2nd defendant, the plaintiff, his son is seeking orders to be made against him under MDO. This will not solve the problems that are afoot but it will only be instrumental in removing whatever dignity he may have despite being in a helpless state. Let TLT live out his remaining years in peace and when it is ordained that TLT should depart, let him leave his family in peace and dignity. It is for this reason that I did not consider it necessary or in the best interest of TLT to subject him to an interview or a preliminary medical examination.

[12] I therefore dismissed the plaintiff's application with costs.